IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4216 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF DECEASED NAUTAMLAL ANANDMAL

Versus

BHAVNAGAR MUNICIPAL CORPN

Appearance:

1. Special Civil Application No. 4216 of 2004

MR SURESH M SHAH for Petitioner No. 1-2

MR MEHUL S SHAH for Petitioner No. 1-2

MR HS MUNSHAW for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 11/08/2004

ORAL JUDGEMENT

1. Rule. Mr. H.S.Munshaw waives service of rule on

behalf of the respondent.

1.1 With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Commissioner, Bhavnagar Municipal Corporation, dated 31st March, 2004 directing to demolish the construction in question exercising powers under Section 260(2) of the Bombay Provincial Municipal Corporation Act,1949.

3. Mr. Mehul S.Shah, learned Advocate appearing on behalf of the petitioners has submitted that the petitioners were served with notice dated 25-9-2003 under Section 260 of the BPMC Act and the petitioners were directed to show cause why construction in question should not be demolished. That the petitioners filed their reply to the show cause notice under Section 260 on 29-9-2003; that thereafter, by communication dated 1-10-2003, the Town Development Officer directed the petitioners to produce certain documents and proof of their ownership. Immediately thereafter, on 4-10-2003, the petitioner has also replied to the said communication dated 1-10-2003. It is the case of the petitioners that though number of submissions were made, without dealing with the same, the Commissioner has passed the impugned order on 31st March, 2004 by which the construction in question is directed to be demolished and seven days time was granted. He has submitted that from the bare reading of the impugned order dated 31st March, 2004, it does not reveal whether the submissions made on behalf of the petitioners are dealt with or not, and though the detailed reply was submitted in the impugned order, it is stated that the petitioners have not made any submissions and/or reply to the show cause notice. He has submitted that this shows clear cut non application of mind on the part of the respondent. He has further submitted that if the submission made on behalf of the petitioners was considered, then, it should have been reflected in the order itself, and the impugned order dated 31st March, 2004 is a non-speaking and non-reasoned order.

4. Mr. Munshaw, learned Advocate appearing for the Municipal Corporation has submitted that against the show cause notice under Section 260 of the BPMC Act, the petitioners have approached the Civil Court by way of filing Regular Civil Suit no.661/2003 and also prayed for an interim injunction below Exh.5 which came to be rejected on 24th December, 2003. Being aggrieved and

dissatisfied with the order passed below Exh.5, appeal came to be filed before the District Court being Misc. Civil Appeal no.146 of 2003, and the same also came to be rejected on 15th January, 2004. He has also further submitted that thereafter, the petitioners had preferred Special Civil Application no.1139 of 2004 which came to be rejected, and therefore, the Commissioner was justified in passing the impugned order dated 31st March, 2004. Therefore, he has submitted that on dismissal of the aforesaid Special Civil Application, no reasons were required to be assigned and as such, the impugned order dated 31st March, 2004 is just and proper. and in fact, the Corporation has considered all the aspects and passed the order.

5. Heard the learned Advocates for the parties.

6. In response to the show cause notice under Section 260 of the BPMC Act, the petitioners have filed reply on 29-9-2003. Thereafter, on receipt of communication dated 1-10-2003, certain documents were asked and were supplied. In spite of that, in the order dated 31st March, 2004, it is stated that in response to the notice no submission or representation is made. This is contrary to the evidence on record. On going through the impugned order dated 31st March, 2004, it is clear that in the order, no reason whatsoever has been assigned, and in fact, submissions made on behalf of the petitioners are not dealt with at all, and if dealt with, then, it is not reflected in the order whether the same are dealt with or not. The authority while passing the order directing to demolish the construction is required to give some reasons, and the order should reflect whether the submissions made by the party in response to the show cause notice under Section 260 are considered and/or dealt with or not. The impugned order dated 31st March, 2004 is a non-speaking and non-reasoned order. Shri Munshaw has tried to justify the order dated 31st March, 2004 by making submission that as the petitioners have lost before the Civil Court, and even Special Civil Application came to be dismissed, the authority was justified in passing the order dated 31st March, 2004. It is required to be noted that the suit which was filed by the petitioners is now withdrawn, and was against the notice under Section 260 of the BPMC Act. Assuming that the suit is dismissed, then, the authority was required to pass further order on the notice and pass an appropriate order by giving some reasons. Therefore, dismissal of the application below Exh.5, the appeal and the Special Civil Application does not absolve the Corporation from passing detailed reasoned order. It is

the case of the respondent-Corporation that while passing order dated 31st March, 2004 they have considered aforesaid aspect and have passed final order, but nothing is reflected in the order as to whether the aforesaid aspect has been considered or not.

7. Under the circumstances, only on the ground that the impugned order dated 31st March, 2004 is non-speaking and non-reasoned, the same is required to be quashed and set aside. Accordingly, the the application is allowed . The impugned order dated 31st March, 2004 is hereby quashed and set aside. The Commissioner, Municipal Corporation is free to pass appropriate order in accordance with the law and pass some speaking and reasoned order. Rule is made absolute to the aforesaid extent with no order as to costs.

6.1 It is, however, made clear that this Court is not expressing any opinion on the merits of the case and it is allowed only on the ground that the order dated 31st March, 2004 is a non-speaking and non-reasoned order.

(M.R.Shah,J.)

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